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Subdivision Regulations

Town of Cushing, Maine

ARTICLE I - Purpose

1.1 These regulations provide an orderly process for review of proposed subdivisions. They are intended to assure the health, safety and welfare of Cushing residents, to protect natural and cultural resources, and to minimize adverse impacts of new subdivisions on neighboring properties.

ARTICLE II - Authority and administration

2.1 Authority. These regulations are promulgated in accordance with Title 30-A M.R.S.A. Section 4403.

2.2 Administration. The Planning Board of the Town of Cushing (hereafter referred to as the Board) shall administer these regulations.

ARTICLE III - Definition of subdivision

3.1 Special meaning. The term subdivision, as used in these regulations and state law, has the special meaning of a subdivision subject by state law to municipal approval. Not all divisions of land are counted as creating a subdivision, because of certain exemptions in the law.

3.2 Statutory definition of subdivision. Title 30-A, Section 4401, subsection 4, defines a subdivision as follows: "Subdivision means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, building or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots, and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both divisions are accomplished by a subdivider who has retained one of the lots for the

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divider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel . The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

(1) A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

(2) A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

(3) A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

(4) A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the purposes of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed valuation of the real estate.

(5) A division accomplished by a gift to a municipality if the municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

(6) A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

C. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a

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subdivision.

D. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

E. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter. -

F. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraph D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

ARTICLE IV - Other definitions. In general, words and terms used in these regulations shall have their customary dictionary meanings. More specifically, certain words and terms are defined below. Definitions of terms found in the State subdivision law are deemed to be adopted into these regulations by reference.

Abutter: One whose property shares a common boundary line or point, including property across a public or private road.

Cluster development: A development in which the lot sizes are reduced below those normally required in return for permanent open space to be owned in common by the lot and/or unit owners, the town or a land conservation organization.

Common open space: Land within or related to a subdivision, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development or the general public.

Contiguous lots: Lots sharing a common boundary.

Contract purchaser: Person or entity contracting to purchase an interest, with or without conditions, in a property.

Cul-de-sac: A circular turnaround at the closed end of a dead-end street or road.

Driveway: a vehicular access-way less than 500 feet in length serving 2 lots or fewer.

Dwelling unit: A room or suite of rooms designed and equipped exclusively for use by one family as a habitation and which contains independent living, cooking, sleeping, bathing and sanitary facilities. The term includes, but is not limited to, manufactured housing, mobile homes, multi-family housing, condominiums, apartments and time-share units. Housing that is not considered to be a dwelling unit includes, but is not limited to,

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recreational vehicles, motel units, and rental cabins serving a transient population.

FEMA: Federal Emergency Management Agency.

Findings of fact: The official determination by an individual or board, following examination and consideration, of the existence of certain facts or conditions, and their relationship to a given set of rules or standards, including the determination that a given application or plan satisfies a given set of rules or standards.

Freshwater Wetland: Freshwater swamps, marshes, bogs and similar areas other than forested wetlands which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Major Subdivision: A subdivision of more than six lots or dwelling units.

MEGIS: Maine Geodetic Information System.

Minor Subdivision: A subdivision of six or fewer lots or dwelling units._

Mobile home park: A parcel of land under unified ownership approved for the placement of 3 or more manufactured homes.

Normal high water line:

Non-tidal bodies of water: That line which is apparent from visible markings, changes in the character of soils due to prolonged action of water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers, streams, brooks or ponds, the normal high water line is the upland edge of the wetland, and not the edge of the open water.

Tidal waters: The identifiable debris line left by tidal action or the upland edge of land subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Oceanographic and Aeronautic Administration.

Professional Engineer: a professional engineer licensed in the State of Maine.

Principal structure: A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Setback: The horizontal distance between a structure or use and the feature of reference such as a water body, lot line or way.-

Substantial construction of infrastructure: The rough grading of at least one quarter of the length of approved subdivision roads.

Tract or parcel of land: All contiguous land in the same ownership, provided that land located on opposite sides of a public or private way are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

ARTICLE V - Procedures for plan review

5.1 Pre-application meetings.

A. Prior to the formal submission of an application for subdivision approval, the applicant or his agent shall attend a meeting of the Board to informally discuss the proposed subdivision.

B. At a pre-application meeting the applicant shall submit:

1. A description of the proposed subdivision, including possible development in phases, or need for a waiver or variance. For a major subdivision, the description shall be written; for a minor subdivision, it may be verbal at the discretion of the Board.

2. A site location map on a tax map base, showing the subject property and surrounding area, including any contiguous properties in which the applicant, owner, contract purchaser, partnership or corporation with a property interest in the application holds a property interest.

3. A sketch plan. This may be a free-hand sketch based on the town tax map, or it may be a surveyor's plan. It should show the proposed layout of lots and their approximate size, proposed roads, structures (including those near-by on abutting property), streams and water bodies, wooded areas, and areas unsuitable for structures or subsurface sewage disposal, such as marshy or ledge terrain and steep slopes. The scale and North point should be indicated.

C. No binding commitments between the applicant and the Board shall be made at this stage. The aim of the pre-application meeting is to establish a general understanding of the subdivision history of the property (if any), what is proposed, the nature of the site, what information is needed, and what if any additional regulation applies.

5.2 Site inspection. The Board may make a site inspection of the property, or may delegate that responsibility to the Code Enforcement Officer. If the number of Board members inspecting the site as a group constitutes a quorum of the Board, it is a meeting which shall be advertised.

5.3 Rights not vested. The pre-application meeting, the submittal or review of the sketch plan, and the on-site inspection shall not be considered the initiation of the review process for the purpose of bringing the plan under the protection of Title I M.R.S.A., Sec. 302.

5.4 Applications. Within 6 months of the pre-application meeting, and not less than 15 days prior to a scheduled Board meeting, the applicant shall submit a formal application for subdivision approval. The cost of providing all information required by these Regulations

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shall be borne by the applicant. Applications will not be accepted from an applicant or developer who is the subject of a pending enforcement action. By filing an application, the applicant is deemed to grant permission to the Board, or its designee, to enter the premises for inspection as necessary. If the person signing the application is not the owner of the property then that person shall submit a letter of authorization from the owner.

A complete application consists of the following:

A. Eight copies of the application form filled out completely and signed by the applicant, seven copies of all components of the Plan of subdivision, and an escrow deposit for such consultant services as the Board may require for review of the application.

B. The Plan of subdivision consists of all information required by these Regulations, and such other written or depicted information as the Board in its discretion may require. Notes and conditions of approval required by the Board shall be incorporated in plans prepared for signature by the Board.

The site plan shall be a digital drawing prepared, sealed and signed by a Professional Engineer and/or Surveyor licensed in the State of Maine, and shall reference the state coordinate system. Drawings for major subdivisions shall be submitted on 24" x 36" sheets.

Plan scale shall be 1"=20' or 30' or 50' or 100', or such other scale as the Board may require to convey all required information clearly. Plans shall include a site location map on a tax map base showing surrounding properties. All plans shall show their latest date.

The Plan of subdivision shall provide the following information:

1. The subdivision name, address, and map and lot number(s) of the property,
2. Name and address of the owner of record, any contract purchaser of the subject property, the applicant, and person drawing the Plan. If any of the above is a corporation, its principals and officers shall be named; if a partnership, the general and limited partners shall be named. Also, the names of any of the above with a property interest in abutting property.
3. A list of the names and addresses of all abutters: the owners of record of adjacent property including land located directly across a public or private road.
4. A plan of existing conditions including:
 - a. Total acreage of the property and the proposed subdivision.
 - b. The location of property lines, buildings, edges of wooded areas, streams, brooks and other defined drainage channels.
 - c. Existing contour lines at not less than five-foot intervals. Based on site conditions, the Board may require two-foot intervals in selected areas. Where a portion of the lot is in a 100-year coastal flood plain, the contour of any flood elevation noted on a FEMA Flood Insurance Rate Map; for other flood areas on FEMA maps, the outline

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of Zone A: more accurate topography in steep slope areas as defined in Shoreland Zoning Ordinance Article 10.D.

d. The location and acreage of any freshwater or coastal wetland, regardless of size, as defined by Natural Resources Protection Act, Title 38 M.R.S.A. Sec. 480-B, Great Pond, or significant wildlife habitat identified by the Maine Department of Inland Fisheries & Wildlife. Mapping of freshwater wetlands may be done with the help of the local soil and water conservation district. For major subdivisions, wetlands on MEGIS data layers shall be shown on a site plan.

e. If any portion of the area to be subdivided lies within the Shoreland Zone, the 250 foot boundary line and the applicable setback line of the Shoreland Zone

f. The location and acreage of any Resource Protection District defined in Article 13 of the Shoreland Zoning Ordinance.

g. In areas where development or change of grades is proposed, identification of soils listed in the Knox & Lincoln County Soils Survey that are identified as:

1. not recommended for development due to high seasonal water table and poor drainage: Biddeford, Boothbay, Brayton, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.

2. not recommended for development due to erosive soils: Biddeford, Boothbay, Buxton, Charles, Eldridge, Marlow, Naumburg, Scantic, Searsport, Sheepscot, Swanville.

3. unstable: Adams and Masardis 15-25% slopes, Allagash 8-15% slopes.

4. not recommended for buildings with basements, due to unstable subsoils: Hermon, Madawaska, Masardis.

h. Location, names and both right of way and paved width of existing roads, and the location of utilities and easements.

i. The location of temporary markers adequate to enable the Board to readily understand and appraise the basic layout of the subdivision.

j. The location of areas identified for protection in any report on historic or pre-historic features required by the Maine Historic Preservation Commission, or Maine Department of Inland Fisheries and Wildlife report regarding the presence of an essential or significant wildlife habitat; or Maine Natural Areas Program report regarding the presence of a rare or unique botanical feature.

5. A plan of proposed development which shall include applicable site features required in Article 5.4.B.4 and:

a. Any phasing proposed; an itemized list of the estimated construction cost of proposed improvements.

b. Proposed uses, lot numbers designated by the Assessor's Agent, numbered

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dwelling units as applicable, lot areas, lot line dimensions; the location, dimensions and square footage of any proposed multifamily or commercial building.

c. For lots containing land unsuitable for development, as defined in Article 7.2 below, a calculation resulting in not less than 40,000 square feet of land suitable for residential development; for land use activities in the Shoreland Zone: area, dimensions, setbacks and lot coverage as set forth in Article 15 A-F and 15.L-O of the Shoreland Zoning Ordinance.

d. Limits of phases; limits of clearing for development activities and storage of materials.

e. Setbacks from protected waters (see Articles 7.3 thru 7.5).

f. At the discretion of the Board, proposed contours and intervals.

g. A plan for stormwater management and the control of erosion and sedimentation showing all improvements and easements; report from a Professional Engineer establishing any application of the Maine Site Location of Development Law or Stormwater Management Law; any MDEP permit application, and order number shown on plans.

h. Locations, names and width of proposed roads, with detailed construction drawings showing the plans, profiles, and typical cross-section of roads and connections to existing roads; MDOT permit and Cushing access approval; permit number noted on plans. The plan view shall be at a scale of 1"= 50'. The vertical scale of profiles shall be 1"=5'. Plans shall include:

1. Rights-of-way, edge of road way and shoulder, ditches, and horizontal and vertical curve data.

2. Size, construction, and elevations of proposed drainage structures and drainage ways and their location with respect to natural waterways.

3. Road debris fill areas.

i. Locations of proposed utilities and the location of any easements on the property.

j. Suggested locations of wells (so keyed on plans) meeting all requirements of Well Drillers & Pump Installers Rules, showing their relation to test pits; and documentation of pre-development yields of existing wells within 500 feet of proposed new wells; and a groundwater report if required by Article 7.7.D.3 or at the discretion of the Board.

k. Location and description of the means of treatment and disposal of sewage; location of Site Evaluator's test pits or borings; notation of any reserve requirement; soils reports for pits on Disposal System Application forms; Soil Evaluator's report meeting all requirements of Maine Subsurface Waste Water Disposal Rules.

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l. Description of proposed means of fire protection, and the location of any proposed fire ponds, dry hydrants or other fire protection facilities. If fire protection is provided by sprinklers, it shall be noted on plans.

m. Covenants defining any individual fire protection water supply system requirements and all common responsibilities for and ownership of roads, stormwater management improvements, fire protection water supply systems, easements or other areas required by the Board for considerations set forth in Article 7.11.

n. Copies of applications to other agencies with jurisdiction, and approvals or orders.

o. A report by a Professional Engineer supporting any proposed development or change of grades on soils listed in Article 5.4.B.4.g or soils described in Article 13.A.5 of the Shoreland Zoning Ordinance.

5.5 Review and approval procedures.

A. Applicants shall deliver all materials that require Planning Board review to the Town Clerk at least 15 days in advance of a regular or special meeting, to allow sufficient time for consideration by the Planning Board. The Town Clerk shall note the date and time of receipt on all such submittals, and issue a dated receipt to the applicant.

B. An escrow deposit and processing fee complying with the schedule of Planning Board Fees and Escrow Funds shall be delivered to the Town Clerk at least 15 days in advance of any meeting at which the application is scheduled to be heard. Escrow funds shall be maintained as set forth in the schedule.

C. After the Code Enforcement Officer has checked and approved the list of abutters submitted, the applicant shall notify them by certified mail, return receipt requested, that an application for subdivision approval has been submitted. The notice form, provided by the Board, shall specify the location of the proposed subdivision and include a general description of the project. The applicant shall provide the Code Enforcement Officer with all receipts 15 days prior to a meeting at which the application is scheduled to be heard.

D. The Code Enforcement Officer shall determine whether the application is complete, and shall either inform the applicant in writing of any additional materials required for a finding of completeness, or sign and provide the applicant a dated copy of the completed application form. Completeness requires that all submittal requirements be met. No application shall appear on a Board agenda until the application is complete and both escrow funds and an initial processing fee have been received by the Town Clerk.

E. The Board shall decide whether to hold a public hearing. If a hearing is to be held, it shall take place within 30 days of determining that the application is complete. If any part of the proposed subdivision is affected by the Shoreland Zone Ordinance, the Board will conduct simultaneous review. Notice of the date, time and place of the hearing shall be published in the a newspaper of general circulation in the Town at least two times, the date of the first publication being at least 7 days prior to the hearing, and displayed at the Town Office, Post Office, and Fales Store for the same period of time.

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F. Within 30 days after the hearing, if one is held, or within 60 days of determining that a complete application has been submitted if no hearing is held, or within any longer time mutually agreed by the Board and applicant, the Board shall make findings of fact and conclude whether or not the application satisfies all the criteria in Title 30-A M.R.S.A. Section 4404 (See Article VII) and the standards of these Regulations. If the Board finds that all of those criteria and the standards of these Regulations have been met, except for any standards of the Regulations which may for cause have been waived (See Article IX, Waivers) they shall approve the Plan.

G. If the Board finds that any of the criteria of the statute or the standards of these Regulations have not been met or waived, the Board shall either

1. deny the application or
2. approve the application with reasonable conditions, directly related to the design and performance standards, to ensure that the purposes of the regulations are effectively carried out. These conditions may include prohibitions or additional requirements. Examples of prohibitions are limits as to use, location or activity. Examples of additional requirements are protective and safety measures.

H. The decision of the Board itemizing its findings and conclusions, and any conditions imposed, and the reasons for those conditions, shall be recorded in the Board's minutes, and available to the applicant within 30 days of a vote on an application.

I. A condition of all subdivision approvals shall be that no lot shall be sold until each of the required certifications identified in Article 8.3 has been submitted to the Town Clerk. In addition, at its discretion, the Board may impose a condition of approval prohibiting the sale of any lot before the Board has received a Certificate of Compliance with specific infrastructure improvements.

J. After any conditions and a list of all plans and documents that are part of the application have been added in writing to a reproducible copy of the cover sheet or site plan sheet(s) of any approved Plan, the Board shall sign it. One copy of each sheet of the approved site plan shall be given to the Board of Tax Assessors and the Code Enforcement Officer. One copy of the entire approved Plan of subdivision shall be placed in the Board's files. A reproducible copy of the approved site plan shall be recorded by the applicant at the Knox County Registry of Deeds within 30 days of the issuance of the Board's decision, and a receipt of its registration shall be provided to the Board.

K. No changes, erasures, modifications or revisions shall be made to the Plan after the Board has signed it.

L. On receiving a Certificate of Compliance with Conditions of Approval (See article 8.3.D), the Board shall confirm its receipt by signing and dating it. The applicant shall record a copy of the Certificate at the Knox County Registry of Deeds within 30 days

M. The Board may reconsider any decision, based on new information that conflicts with its findings, by holding a hearing within thirty days.

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N. Approvals are valid for two years. The site plan shall note that plan approval shall lapse after two years unless substantial construction of infrastructure has been certified by the Code Enforcement Officer.

O. In the event the application is denied, a second request for approval shall not be filed or accepted for processing by the Board for 6 months following a denial. Such a second application must evidence substantial change affecting its merits.

ARTICLE VI - Revision of approved Plans; phased plans

6.1 Procedure. An applicant for a revision of an approved Plan which has been filed at the Registry of Deeds shall schedule a pre-application meeting with the Board, at which time the Board will decide, depending upon the extent of the proposed revision, upon the procedures for its review.

6.2 Submittal of revised Plan. The applicant shall submit a Plan in a form acceptable for recording at the Registry of Deeds, and eight copies. The application shall include enough supporting information for the Board to make a determination.

The revised Plan shall indicate that it is a revision of a previously approved Plan and shall give the Registry book and page numbers (or cabinet and sheet numbers as applicable) for any such previously approved Plan.

6.3 Scope of review. The extent of the Board's review shall be limited to those portions of the Plan which are proposed to be changed. However, areas and features of previously approved subdivisions and of parcels that are developed in phases may be subject to review if the proposed subdivision revisions affect such previously approved areas or features or otherwise trigger the requirements and standards of this Regulation or of other Town or state regulations.

ARTICLE VII - Review standards. The proposed subdivision shall conform with any duly adopted land use regulation, ordinance, or comprehensive plan, development plan or land use plan, and to other Town regulations and Ordinances, and State law and departmental rules. In making this determination, the Planning Board may interpret these documents.

The applicant has the burden of proof of demonstrating that the proposed subdivision is eligible for approval and conforms to all requirements of law and regulation, and to all Subdivision Regulation criteria and standards for design and performance. The Board will make findings of fact, conclusions and decisions based on information presented during review.

7.1 Financial and technical capacity.

A. The applicant shall demonstrate adequate financial resources to complete the improvements shown on the plans and meet the criteria of the Articles VII and VIII.

B. For a major subdivision, the applicant shall retain experienced contractors to construct the required improvements consistent with the standards of this Regulation. In determining

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the applicant's technical ability the Board shall consider the applicant's previous experience, and any circumstances of violations of previous approvals granted to the applicant.

7.2 Land suitable for development. The Planning Board shall not approve for development any portions of a proposed subdivision that:

A. Are located within the 100-year flood plain as identified on a FEMA Flood Insurance Rate map, as plotted on the site contour of the local flood elevation, unless the proposed development is authorized by state or federal regulation.

B. Do not comply with uses permitted in a Resource Protection District.

C. Are located within a freshwater or coastal wetland, unless sufficient evidence of necessary approvals for proposed wetland impacts is provided by the applicant.

D. Are located on soils listed in Article 5.4.B.4.g, or Shoreland Zoning Ordinance 13.A.5 unless development on them is addressed and supported by the report of a Professional Engineer.

E. Has had timber harvested on any part of the parcel being subdivided in violation of rules adopted pursuant to Title 12, section 8869, subsection 14 (liquidation harvesting), if five years have not elapsed since the owner under whose ownership the harvest occurred acquired the parcel.

7.3 Freshwater wetlands. The proposed subdivision plans shall identify all freshwater wetlands, and the applicant shall provide documentation that demonstrates that the proposed subdivision will not violate applicable state and federal requirements.

7.4 Stream or brook. The proposed subdivision plans shall identify all streams and brooks and the applicant shall provide documentation that demonstrates that the proposed subdivision will not violate applicable state and federal requirements. For the purposes of this section, "stream" and "brook" has the same meaning as in Title 38 M.R.S.A. section 480B, subsection 9.

7.5 Surface waters.

A. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38 § 436-A.11, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

B. For a subdivision in the immediate watershed of a Great Pond, a report by a Professional Engineer shall be provided which determines the pre-development phosphorus concentration of the Great Pond and concludes that based on the stormwater management design, the proposed subdivision will not unreasonably increase the Great Pond's concentration of phosphorus during the construction phase and the life of the proposed subdivision.

7.6 Shoreland Zone. Subdivision plans shall document compliance with the Town of Cushing Shoreland Zoning Ordinance.

7.7 Minimizing pollution. The proposed subdivision shall not result in undue water or air pollution.

A. Flood plains.

1. If the subdivision, or any part of it, is determined to be in a 100-year flood plain, the plan shall show the location of the 100-year flood elevation and flood hazard boundaries within the subdivision.

2. In coastal areas, flood elevations shown on FEMA flood insurance rate maps shall be shown as a contour line on plans.

3. When an application contains a 100-year flood plain, a note on the site plan shall state that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

B. Management of storm water and erosion.

1. The Applicant shall provide documentation that

a. stormwater management complies with applicable requirements of Title 38 M.R.S.A. Sections 420-C Erosion and Sediment Control and 420-D Storm Water Management, with DEP Chapter 500 rules, and with Articles 15.I, 15.O and 15.P of the Shoreland Zoning Ordinance;

b. site preparation, construction, clean-up and maintenance complies with the Stormwater Management Manual and Maine Erosion and Sediment Control BMPs; and

c. the proposed subdivision reasonably maximizes retention of existing native vegetation; generally, disturbance of slopes steeper than 20% **is** avoided.

2. All MDEP applications and approval orders shall be provided to the Board on receipt.

3. The Planning Board may require a hydrologic analysis in areas with a history of flooding or a potential for future flooding based on the size and characteristics of the watershed. This hydrologic analysis shall be in the form of a Downstream Analysis in which present and proposed flow rates and velocities of the 10-year, 24-hour storm, the 25-year, 24-hour storm, and the 100-year, 24-hour storm are analyzed downstream to the point where the site represents 10% of the total drainage area. Onsite detention is mandated if proposed flow rate and velocity increases exceed 5% or if the capacity of existing downstream drainage structures is exceeded.

4. Topsoil removed from areas to be developed shall be stored and used on finished

grades. No topsoil shall be removed from the site. A location for the deposit of trapped sediments and used filter material shall be designated.

C. Waste disposal. The Applicant shall provide documentation that the soils and subsoils of the proposed subdivision are capable of supporting household biological waste disposal and keeping disposal effluents from degrading water quality for consumption and habitat, and that the proposed subdivision provides sufficient facilities for solid waste and sewage disposal.

1. Sewage disposal shall be private subsurface wastewater disposal systems or a private treatment facility with surface discharge, licensed by the Department of Environmental Protection.

2. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.

D. Water Resources.

The Applicant shall provide documentation that the proposed subdivision will have sufficient water available for its reasonably foreseeable needs including but not limited to drinking water and fire protection, and that each dwelling will have an adequate and safe water supply.

1. The proposed subdivision shall not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water available to any well in or within 500 feet of the subdivision.

2. Water supply design shall place individual wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.

3. Applications in areas subject to salt water intrusion, or that are indicated on plate A of the Emery & Garrett Hydrogeological Report for Cushing as likely to experience salt water intrusion, shall include recommendations by a Professional Engineer with experience and training in groundwater hydrology.

4. If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).

7.8 Roads and Traffic. The proposed subdivision shall not cause unreasonable congestion or unsafe conditions with respect to the use of existing public or private roads or proposed roads. A subdivision that crosses a municipal boundary shall not cause unreasonable congestion or unsafe conditions with respect to the use of public roads in the adjoining municipality.

A. Subdivision roads shall provide access to each lot, commercial or multifamily building, fire

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pond, utility easement, and common area or easement within the subdivision. Utility easements shall provide access from roads for installation and maintenance of electric, telephone, and cable services and storm water management facilities, drainage ways and ditches.

B. If an application proposes to use existing subdivision roads for access to new lots or buildings, and that level of use of those roads would place those roads in a category of use with standards in this Regulation which their present condition does not meet, then the improvements needed to meet the standards shall be a condition of approval.

C. Road design shall meet the following standards, and within the Shoreland Zone, the standards of Article 15.G. Road design for a major subdivision shall be prepared by a Professional Engineer. At its discretion, the Board may, at the applicant's expense, retain a Professional Engineer to review road design for a minor subdivision.

1. Entrances of private roads into a public road shall be as close as possible to 90 degrees with a minimum angle of 60 degrees and shall be located as permitted by the Maine Department of Transportation or Town of Cushing Road Access Ordinance. The first 15 feet of roadway adjoining any paved road shall be paved.

2. Roads shall be designed to accommodate fire department equipment, providing 16 foot overhead clearance.

3. Road rights-of-way shall be not less than 50 feet wide. A dead-end road shall be provided with a turn-around at the closed end to accommodate emergency vehicles and moving vans.

4. A road or driveway serving 6 lots or fewer shall have a travel surface at least 16 feet wide with three foot shoulders on each side.

5. A road serving more than 6 and not more than 20 lots shall have a travel surface at least 18 feet wide, with three foot shoulders on each side.

6. A road serving more than 20 lots shall have a travel surface at least 20 feet wide, with four foot shoulders on each side.

7. A road serving more than 25 lots shall be constructed to the present standards for Town roads.

8. Grades of all roads shall conform closely to the terrain. Maximum grade on any road or driveway serving more than one dwelling shall be 10 percent. Within 50 feet of connection to a public road, maximum grade shall not exceed 3 percent. Grades in dead-end turn areas and fire access turn-outs shall not exceed 5 percent.

9. The minimum centerline radius of roads shall be not less than 100 feet. In dead-end turn areas, the right-of-way radius of a turning circle shall be sixty feet. The road width in a turning circle shall be 26 feet with a minimum outer radius of 50 feet.

The lane length of both legs of a dead end road T or Y turn shall be 55 feet, each leg width

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20 feet, and any inside lane radius 35 feet.

D. Road construction shall comply with Maine Erosion and Sediment Control BMPs and the following:

1. Clays, organic material, rock and boulders shall be removed to a depth two feet below the subgrade of the travel surface and shoulder, and replaced with compacted granular borrow. A travel way serving up to six lots shall be constructed of a minimum of 12 inches of six inch minus topped with four inches of one inch minus gravel. For additional traffic, the roadway shall be constructed of a minimum of 18 inches of six inch minus topped with four inches of one inch minus gravel.

2. The travel surface of the road shall have a slope of 1/4 inch per foot from center line to side. Shoulders on each side shall have a maximum slope of 1 inch per foot.

3. Ditches shall be graded at a maximum slope of six inches per foot of width from the edge of the shoulder to at least 15 inches below the edge of the shoulder, and where flow gradients exceed 2 percent, shall be stabilized with vegetation or stone.

E. Prior to requesting certification of road completion the applicant shall dispose of all debris resulting from road construction either offsite or in approved fill areas, filled to design contours by not less than four inches of topsoil, limed, fertilized and seeded.

7.9 Fire protection.

A. Fire protection shall be provided in a subdivision of 3 or more lots, either in the form of a site-based water supply system or as an automatic sprinkler system installed in each habitable dwelling in accordance with NFPA Section 13R or 13D. When fire protection is provided by sprinklers, their requirement and specifications shall be set forth in a covenant in the deed to each subdivided lot.

B. Site-based system.

1. A site-based system shall provide a minimum of 150,000 gallons of stored water available for the purpose of supplying the fire flow requirements of 1,000 gallons per minute for the duration of one hour. The system shall be designed by a Professional Engineer acceptable to the Fire Department Chief or other Fire Department officer designated by the Chief. The minimum 150,000 gallons of water shall be calculated from the top side of the dry hydrant suction screen and from the bottom of 18 inches of water ice.

2. Fire ponds shall be located on common land. The subdivision Plan shall depict the location of the pond and the means of access to the pond, including a turnout if one is required. The maximum distance from the dry hydrant or the drafting point of the pond to any lot within the subdivision shall be no greater than 2,000 feet by road.

3. Prior to approval of the subdivision Plan, the applicant shall provide a detailed plan of the water supply system, including the pond, cistern, dry hydrant, piping, overflow, access road

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and turnout to the satisfaction of the Planning Board and Fire Chief. The detailed plan shall be consistent with the general plan as depicted in the final subdivision Plan.

4. Prior to any lot within the subdivision being sold, and prior to any permit being issued for a structure or use within the subdivision, the fire protection water supply system, including pond, cistern, dry hydrant, piping and access road and turnout shall be installed in good working order, and tested to the satisfaction of the Fire Chief.

C. Access.

1. When a dry hydrant is located adjacent to a public road or a subdivision road, the fire department shall be provided with turnout space outside the traffic lane.

2. In case the dry hydrant cannot be placed next to a public road or a subdivision road, an access road and turnout to the dry hydrant area shall be provided. The access road and turnout shall allow a fire department pumper to connect to the dry hydrant connection with one 10 foot length of hard suction hose with a strainer to be placed into the pond with a depth over strainer sufficient to draw water at a rate of 1,000 gallons per minute without whirlpooling.

4. Any fencing of the dry hydrant access road area is subject to the written approval of the Fire Chief. Keys to the lock of any gate shall be under the control of the Fire Chief.

D. Fire Ponds shall be designed and constructed to the following standards:

1. Fire ponds shall be designed with a 2 horizontal to 1 vertical sloped banking with a minimum water depth of 10 feet.

2. The water storage level shall be maintained at all times by one or a combination of the following: a spring, well point, pumping facility, rain or snow runoff, or other method approved by the Chief.

3. An overflow system shall be installed with proper drainage materials and facilities to handle the overflow.

4. All areas disturbed by pond area construction shall be graded, stabilized and seeded within two weeks to prevent erosion.

5. In all other respects the construction, stabilization and maintenance of the pond and surrounding area shall be consistent with section G-2 of the Maine Erosion and Sediment Control BMP.

E. Dry Hydrants shall be installed to the following standards:

1. A minimum of 8-inch piping and fittings shall be utilized from the screen to the 90 degree elbow.

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2. Piping and fittings shall be a minimum of schedule 40 rating. The steamer hose connection shall be 4 and 1/2 inch, National Standard thread.
3. The riser piping and 90 degree elbow shall be 8 inch
4. The piping from the suction screen to the 90 degree elbow below the ground shall be schedule 40 steel or PVC, capped at the screen end.
5. All pipe connections shall be cleaned, and if PVC is used it shall be primed and cemented so as to provide air-tight connections.
6. The 90 degree elbow below ground shall have 6 feet of cover from the finished grade.
7. The maximum of lift permitted shall be 15 feet as measured from the surface of the water to the center of the suction inlet of the pumper.
8. The riser piping shall be exposed above grade level 24 inches as measured from the center of the dry hydrant opening to the grade level of the fire apparatus position.

F. Waivers. Waivers to this section may be granted by the Planning Board in accordance with Article IX of these regulations, with review and comment from the Fire Chief and in accordance with the following additional conditions.

(a) A waiver granting relief from construction of a fire pond within the subdivision may be granted only if permanently accessible water supplies, such as large streams, rivers, quarries, fire ponds etc. exist within the distance requirements set forth in Article 7.9.B.2 above, and meet or exceed the fire flow and water reserve requirements set forth in Article 7.9.B.1 above, or if the applicant demonstrates that due to soil conditions or other considerations, a pond cannot be supported. In case a pond cannot be supported, either sprinklers or underground storage tanks or cisterns, the size and number of which shall be determined by the Fire Chief, will be required as an alternative source of fire protection.

(b) Waivers to the minimum gallonage requirements may be granted for subdivisions of less than 7 lots, if the fire load requirements (such as wildfire interface conditions) would enable a gallonage reduction. Waivers under this Section may be granted only with the written approval of the Chief.

7.10 Common infrastructure. A covenant running with the deeds to all subdivision properties shall require participation in a lot owners association created to own and maintain all roads, fire ponds, storm water management improvements and other common property and facilities. The covenant shall provide for association costs to be shared equitably.

7.11 Aesthetic, cultural and natural values. The proposed subdivision shall not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.

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A. For reasons set forth consistent with Article 1.1, the Board may require that an area in a major subdivision be left undisturbed or otherwise designated by easement and covenant for use by residents of the subdivision, for physical or visual access to a water body, or to avoid undue adverse impact on the scenic or natural beauty of an area designated by a Maine Natural Areas Program, or on a historic site designated by the National Register of Historic Places or by the Maine Historic Preservation Commission, or on a significant wildlife habitat identified by the Maine Department of Inland Fisheries and Wildlife.

B. The size, location and physical features of any such areas, and any conditions of approval, whether improvements or restrictions, shall be the minimum deemed necessary by the Board to achieve the intended purpose.

C. Where the proposed subdivision abuts a water body, the Board may require that a portion of the waterfront be set aside to provide access to the water by residents of the subdivision, and may establish conditions for minimum water frontage of such reserved space, its area and provisions for parking and boat access.

7.12 Lots. Except in mobile-home parks, cluster developments, and areas limited to non-residential uses, the following shall apply:

A. Lots shall have a minimum size of 40,000 square feet of developable land per residential unit, exclusive of any land unsuitable for development as set forth in Article 7.2.

B. Larger lot sizes may be required if the soil characteristics for on-site sewage disposal systems require a larger area than the minimum size lot. In making a judgment, the Board shall be guided by a Soil Evaluator's report consistent with *State of Maine Subsurface Wastewater Disposal Rules*.

C. If a lot on one side of a stream, tidal water or similar barrier fails to meet the minimum lot-size requirement, it may not be combined with an area on the other side of such barrier to meet the requirement.

D. Lots shall have a shape such that a circle 150 ft. in diameter can be completely contained within the lot.

E. Lots abutting a water body shall have a minimum frontage of 150 feet measured as a straight line between the points of intersection of lot lines with the mean high water line or non-tidal water line.

F. Each lot directly fronting on a public or private road shall have a minimum frontage of 150 feet measured as a straight line between the points of intersection of lot lines with the road right-of-way, except that on a cul-de-sac, frontage may be reduced to 75 feet, and total corner lot frontage shall be not less than 300 feet.

G. Up to two lots served by, but not fronting on, a private road may be accessed by a driveway within an easement not less than thirty feet wide, provided the driveway meets the requirements of Articles 7.8.C.8, 7.8.C.9, and 7.8.D, and provided the turn

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radius from the road to the driveway is not less than 35 feet for emergency vehicles. Lots accessed in this way shall not comprise more than 10% of the total number of new lots created. The easement shall be owned and maintained under the deed covenant described in Article 7.10, as set forth therein. The area in the easement shall be considered land not suitable for development in calculating minimum lot area.

7.13 Mobile home parks. Design standards for mobile home parks shall be the State requirements for licensing. Approval shall be based on the review criteria of State law.

7.14 Cluster development. These provisions allow flexibility in the design of housing developments to achieve common open space and protect natural features from development, provided that the net residential density is no greater than in a conventional subdivision. The basic requirements are:

A. Cluster developments must meet all requirements and standards of these regulations, except those dealing with lot layout, dimensions and area.

B. Where a cluster development abuts a water body, a portion of the shorefront shall be a part of the common land.

C. In cluster developments with individual lot sizes of 20,000 sq. ft. or less, all dwelling units shall be connected to a common water supply and distribution system.

D. In cluster developments with individual lot sizes of 20,000 sq. ft. or less, all dwelling units shall be connected to a public or private central sewer system

E. The overall density of cluster developments shall conform to these regulations and any other applicable laws and ordinances.

F. In reviewing proposed cluster developments the Board may reduce required lot size and frontage by as much as 50 percent.

ARTICLE VIII - Improvements and guarantee.

8.1 Required improvements. All improvements shown on Plans, such as grading, roads, walks, storm water management improvements, utilities, fire protection facilities, and as applicable, centralized water supply and sanitary sewage systems, together with the cost of their design and the certification of their completion, shall be provided at the expense of the applicant. No clearing for purposes of development is permitted prior to Planning Board approval or outside the limits of clearing shown on the site plan.

8.2 Performance guarantee and sale of lots. To ensure that all required improvements are completed in accordance with the standards of these Regulations and in a timely manner, the Board may require the applicant to furnish a performance guarantee.

A. For a major subdivision, a performance guarantee shall be provided in the form of

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a letter of credit conforming to the sample in Appendix A, running to the Town of Cushing, issued by a bank or other surety licensed to do business in the State of Maine.

B. The amount of the guarantee shall be 125 percent of the estimated cost of the required improvements that is accepted by the Board. The Board may select a Professional Engineer to review the applicant's estimated cost of required improvements and recommend any reasonable adjustments to the Board.

C. Prior to the sale of any lot, permanent markers shall be set at all corners and angle points of the lot. Markers may be granite, concrete, iron pin or rod, or a drill hole in ledge or boulder.

No lot shall be sold until each of the required certifications identified in article 8.3 (A)-(D) has been submitted to the Town Clerk. On notice from the Town Clerk that all certifications have been received, the Board chairman shall authorize the release the performance guarantee. However, an amount thereof stipulated in the approval as a guarantee of the health of all plantings and seeded areas for the longer of one year or an entire growing season shall be retained until satisfactory growth or the expiration of time has been certified to the Town Clerk by the Code Enforcement Officer. On notice of this certification from the Town Clerk, the Board chairman shall authorize the release any remaining retainage.

8.3 Certifications of completion. No lot shall be sold until each of the required certifications below has been submitted to the Town Clerk.

A. **Certification of completion of roads.** When the applicant notifies the Code Enforcement Officer that subdivision roads are complete, the Code Enforcement Officer shall conduct an inspection with the Road Commissioner. When the Code Enforcement Officer concludes that all standards and terms of the approval have been met, he shall provide the Board a Certificate of Completion of Roads.

B. **Certification of completion of Storm Water Management and Erosion and Sediment Control Improvements.** When the applicant notifies the Code Enforcement Officer that stormwater management improvements are complete, the Code Enforcement Officer shall conduct an inspection. When the Code Enforcement Officer concludes that all standards and terms of the approval have been met, he shall provide the Board a Certificate of Completion of Stormwater Management and Erosion and Sediment Control Improvements.

C. **Certification of completion of Fire Protection Water Supply System.** When the applicant notifies the Fire Chief that fire protection system improvements are complete, the Fire Chief shall conduct an inspection with the Code Enforcement Officer, and on finding the system is consistent with the standards and terms of approval, he shall provide the Board a Certificate of Completion of Fire Protection Improvements.

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D. Certification of compliance with conditions of approval. At the request of the applicant, the Code Enforcement Officer shall ascertain whether all conditions of approval have been met, and when they have been met, shall provide the Board a Certificate of Compliance with Conditions of Approval.

E. Professional assistance. The services of a Professional Engineer satisfactory to the Board may be required to assist the Code Enforcement Officer or Fire Chief in determining the compliance of improvements with the criteria and standards of these Regulations and with all terms and conditions of approval.

ARTICLE IX - Waivers.

9.1 Waiving design and performance standards. On a finding of undue hardship, the Board may waive portions of the design and performance standards, provided that the public health, safety and welfare are protected. A waiver shall not have the effect of nullifying the intent and purpose of any Comprehensive Plan, ordinance, law or regulation.

9.2 Waiving submittal requirements. For a minor subdivision, the Board may, with the concurrence of the Code Enforcement Officer, waive the submittal of certain items of information listed in Articles 5.4 and 8.2.

9.3 Waivers conditionally granted. In granting waivers to any of the provisions of these regulations in accordance with Articles 9.1 and 9.2 above, the Board shall require such conditions as will assure that the objectives of these Regulations are met.

ARTICLE X - Prohibited activities The following excerpts from Title 30-A M.R.S.A. Section 4406 are subdivision-related activities prohibited by law. It is hereby declared that such activities are also violations of these Regulations

10.1 Conveyances without approval. No person may sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision that has not been approved by the Board and recorded at the Registry of Deeds

10.2 Penalties. Any person who sells, leases, develops, builds upon, or conveys for consideration any land or dwelling unit in a subdivision that has not been approved under this Regulation and under Title 38, chapter 3, subchapter 1, article 6, where applicable, shall be penalized in accordance with section 4452.

10.3 Conformity with Plan and conditions. Any person who after receiving subdivision approval from the Planning Board and recording the plan at the Registry of Deeds, constructs or develops the subdivision, or transfers any lot in a manner other than depicted on the approved Plans or amendments, or in violation of any condition imposed by the Planning Board or the Department of Environmental Protection, where applicable, shall be in violation of these Regulations and subject to penalty in accordance with Article XI of these Regulations.

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10.4 Permits withheld pending approval. No building permit or use permit for any land within a subdivision may be issued before the subdivision has been approved and the plan recorded at the Registry of Deeds.

ARTICLE XI - Enforcement. These regulations shall be enforced by the Code Enforcement Officer of the Town of Cushing. Violations of any provisions of these regulations shall be punished accordance with the provisions of Title 30-A M.R.S.A §4452. Violators shall be subject to a fine of a minimum of \$100.00 for each violation, up to a maximum of \$2500, or up to \$25,000, if the applicant has had a previous conviction within 2 years. Each day that a violation continues shall constitute a separate violation.

ARTICLE XII - Appeals.

12.1 Appeals from any notice of violation issued by the Code Enforcement Officer pursuant to these regulations shall be taken to the Board of Appeals and from the Board of Appeals to the Superior Court according to the provisions of the Maine revised statutes.

12.2 Any aggrieved party having proper standing may file an appeal to the Knox County Superior Court within 30 days of any Planning Board approval or denial of a subdivision application under these regulations.

ARTICLE XIII – Conflicts with other ordinances. Whenever a provision of these Regulations conflicts with or is inconsistent with another provision of these Regulations, the more restrictive provision shall control. Whenever a provision of these Regulations conflicts with or is inconsistent with a provision of any other Ordinance, regulation or statute administered by the Town or state, the more restrictive provision shall control.

ARTICLE XIV Severability and effective date.

14.1 Severability. The invalidity of any section, subsection, clause, phrase or word of these regulations shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase or word of these regulations

14.2 Effective date. On the effective date of adoption of these regulations, all previous subdivision regulations promulgated by the Cushing Planning Board become null and void.

ARTICLE XV - Amendments

15.1 State law automatically adopted. Changes in State law relevant to subdivision regulation are hereby deemed to amend these regulations

15.2 Amendments permitted. Except as set forth in Section 16.1 above, and as permitted by statute, these regulations may be amended by the Board following a duly publicized public hearing.

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Appendix A. Forms

[Print on Bank Letterhead]

Irrevocable Letter of Credit

[insert date]

Letter of Credit No. [insert number]

Town of [insert name of Town]

[insert Town address]

Gentlemen:

We, [insert name of Bank] (the "Bank"), hereby open our Irrevocable Letter of Credit in favor of the Town of [insert name of Town] (the "Town") in the original amount of \$[insert amount of performance guarantee] (herein called the "Stated Amount") for the account of [insert name of Developer] ("Developer").

We hereby irrevocably authorize you to draw on us in accordance with the terms and conditions hereinafter set forth by a sight draft in the aggregate amount not exceeding the Stated Amount. Partial drawings under the Letter of Credit are permitted.

Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you upon presentation of your sight draft accompanied by your certificate in the form of Annex A hereto to the effect that Developer has failed to complete the required improvements for [insert name of project], approved by the [insert name of Town] Planning Board on [insert approval date], prior to [insert date for completion, which must be at least 30 days prior to expiration of letter of credit].

A sight draft under this Letter of Credit must bear on its face the clause:

"Drawn under Letter of Credit Number [insert number] "

The demand for payment hereunder shall not exceed the Stated Amount.

Demand for payment under this Letter of Credit may be made prior to expiration at any time during the Bank's business hours at its office at [insert Bank address] on a day on which the Town and the Bank's office are open for the purpose of conducting

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commercial banking business (a "Business Day"). Any demand for payment and all other communications to the Bank relating to this Letter of Credit shall be in writing and addressed and presented to [insert name of Bank Officer] at its office at [insert Bank address] and shall make specific reference to this Letter of Credit by number. If demand for payment is made by you hereunder before 4:00 P.M., prevailing time, on a Business Day, and provided that such demand for payment conforms to the terms and conditions hereof, payment shall be made to you of the amount demanded in immediately available funds not later than 10:00 A.M., prevailing time, on the next succeeding Business Day.

This Letter of Credit, including the attached Annex A, sets forth in full the terms of our undertaking, and this undertaking shall not in any way be amended or amplified by reference to any document, instrument, or agreement referred to herein (except the Uniform Customs defined below) or to which this Letter of Credit relates and, in any such reference, shall not be deemed to incorporate herein by reference any document, instrument or agreement.

This Letter of Credit is not transferable.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication Number 500, and any subsequent revisions thereof approved by the International Chamber of Commerce (the "Uniform Customs"). As to matters not governed by the Uniform Customs and as to the obligations of the Bank upon presentation of a sight draft by the Town, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of Maine.

This Letter of Credit shall expire on the Bank's close of business at its office at [insert Bank address] on the earlier to occur of:

- (a) 4:00 P.M., prevailing time, on [insert date at least 30 days after deadline for completion of improvements] or, if that date is not a Business Day, on the first Business Day after that date; or
- (b) the date on which we receive a certificate from the Town that no amounts are due.

Very truly yours,

[insert name of Bank]

By: [insert name of Bank Officer signing letter]
Title: [insert Bank Officer's title]

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ANNEX A
(To Letter of Credit Number [insert number])

Certificate of the Town

[insert name of Bank]
[insert Bank address]

Attention: [insert name of Bank Officer]

Re: Irrevocable Letter of Credit Number [insert number]

Gentlemen:

The undersigned, being a duly authorized officer of the Town of [insert name of Town], hereby certifies to [insert name of Bank] as follows:

- A. The amount of \$ [insert total amount due] is due and payable to the Town because Developer has failed to complete the required improvements for [insert name of project], approved by Town Planning Board on [insert date of approval], prior to [insert date for completion, which must be at least 30 days prior to expiration of letter of credit].
- B. The undersigned is making demand for payment under the Letter of Credit identified above in the amount of \$ [insert total amount due].

IN WITNESS WHEREOF, the undersigned, a duly authorized officer of the Town, has executed and delivered this Certificate this _____ day of _____ 200__.

Town of [insert name of Town]

By: _____
[insert name of Town official signing certificate]
Title: [insert Town official's title]
Duly Authorized

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Certificate of adoption

I hereby attest that this is a true copy of the Subdivision Regulations of the Town of Cushing, Maine, duly adopted by the Cushing Planning Board on May 5, 1993 and amended August 2, 1995, August 28, 2002, May 7, 2003, and **June** _____, 2007.

Town Clerk

Date